

1 herein which, therefore, will be unable to present a competitive  
2 package to advertisers and will not, in addition, be able to  
3 serve the needs and desires of its viewing public as mandated by  
4 the FCC.

5  
6 **FOURTH CLAIM FOR RELIEF**

7 **(Monopolization Against All Defendants)**

8 84. Plaintiff realleges and incorporates by this  
9 reference each and every allegation of paragraphs 1 through 83 of  
10 this Complaint.

11 85. Defendants have monopolized a part of the trade  
12 or commerce among the several states, in violation of Section Two  
13 of the Sherman Act 15 U.S.C. §2.

14  
15 **FIFTH CLAIM FOR RELIEF**

16 **(Conspiracy to Monopolize Against All Defendants)**

17 86. Plaintiff realleges and incorporates herein by  
18 this reference each and every allegation contained in paragraphs  
19 1 through 85 of this Complaint.

20 87. Defendants have combined and conspired to  
21 monopolize a part of the trade or commerce among the several  
22 states in violation of Section Two of the Sherman Act, 15 U.S.C.  
23 § 2.

24  
25 **SIXTH CLAIM FOR RELIEF**

26 **(Violation of California Business & Professions Code § 16720**  
27 **Against All Defendants)**

28 88. Plaintiff realleges and incorporates herein by

1 this reference each and every allegation contained in paragraphs  
2 1 through 87 of this Complaint.

3 89. By reason of the foregoing, defendants have  
4 violated the provisions of § 16720 of the California Business &  
5 Professions Code.

6  
7 **SEVENTH CLAIM FOR RELIEF**

8 (For Inducing Breach of Contract Against All Defendants)

9 90. Plaintiff realleges and incorporates herein by  
10 this reference each and every allegation contained in paragraphs  
11 1 through 89 of this Complaint.

12 91. Defendants PTN, CVN, PAC-10, CAP CITIES/ABC, ABC  
13 SPORTS, ESPN and DOE defendants 1 through 5 on or before August  
14 28, 1991 willfully and intentionally induced defendants WSU and  
15 OSU to breach their contracts, of which defendants had knowledge,  
16 with plaintiff KMPH or, alternatively, contracts between OSU and  
17 FSU and WSU and FSU pursuant to which KMPH was the intended third  
18 party beneficiary, for the televising of the FSU versus WSU and  
19 FSU versus OSU games to the viewers within the KMPH ADI on  
20 September 14, 1991 and September 21, 1991, respectively.

21 92. Plaintiff is informed and believes and thereupon  
22 alleges that defendants PTN, CVN, PAC-10, CAP CITIES/ABC and ABC  
23 SPORTS, for their own malicious motives, induced OSU and WSU to  
24 breach their respective contracts with KMPH, or FSU, by  
25 threatening OSU and WSU with sanctions by the PAC-10, legal  
26 action by defendants, and threats to boycott future broadcasts of  
27 OSU and WSU games.

28 93. In doing the acts alleged, defendants and each of

1    them have been guilty of oppression, and malice and of acting in  
2    conscious and willful disregard of plaintiff's rights, entitling  
3    plaintiff to recover punitive and exemplary damages in an amount  
4    to be shown according to proof at trial.

5  
6                                   **EIGHTH CLAIM OF RELIEF**

7                   **(For Interference With Prospective Economic**  
8                   **Advantage Against All Defendants)**

9                   94. Plaintiff realleges and incorporates herein by  
10                  this reference each and every allegation contained in paragraphs  
11                  1 through 93 of this Complaint.

12                 95. Defendants PTN, CVN, PAC-10, CAP CITIES/ABC, ABC  
13                 SPORTS, ESPN and Doe defendants 1 through 5 were aware that  
14                 pursuant to the letter agreements attached hereto as Exhibits "A"  
15                 and "B" respectively, that plaintiff KMPH intended to broadcast  
16                 the FSU versus WSU and FSU versus OSU college football games on  
17                 September 14, 1991 and September 21, 1991, respectively.

18                 96. Said defendants intended to, and did interfere  
19                 with the relationship between KMPH on the one hand, and OSU and  
20                 WSU on the other hand by, inter alia, threatening OSU and WSU  
21                 with PAC-10 sanctions, legal action, and boycotts of future  
22                 college football telecasts, and in so doing, intentionally  
23                 interfered with KMPH's rights to broadcast the September 14, 1991  
24                 and September 21, 1991 football games and prevented KMPH from  
25                 broadcasting those games and did thereby interfere with the  
26                 prospective business advantage of KMPH legally causing the  
27                 damages alleged herein.

28                 ///

1 WHEREFORE, plaintiff prays for relief as follows:

2 Claims for Relief One through Six, Inclusive

3 1. Damages in excess of \$150,000.00 trebled;

4 2. Interest computed according to law;

5 3. Reasonable attorney's fees and costs; and

6 4. That defendant PAC-10 and its members be  
7 preliminarily and permanently enjoined from participating in any  
8 agreement which:

9 (a) limits the ability of any individual college  
10 or university to market television rights to its  
11 football games in head-to-head competition with the  
12 telecast of any other college or university football  
13 game;

14 (b) restricts the number of times any individual  
15 college or university may televise its football games;  
16 or

17 (c) limits the ability of any college or  
18 university to freely and independently negotiate the  
19 price for television rights to its football games.

20 5. That defendants ABC, ABC Sports, ESPN, PTN, and  
21 CVN, be preliminarily and permanently enjoined from soliciting or  
22 accepting television rights to college football games which:

23 (a) limit the ability of any individual college  
24 or university to market television rights to its  
25 football games in head-to-head competition with the  
26 telecast of any other college or university football  
27 game;

28 (b) restrict the number of times any individual

college or university may televise its football games;  
or

(c) limit the ability of any college or  
university to freely and independently negotiate the  
price for television rights to its football games.

6. Such further and other relief as the Court deems  
just and proper.

Claims for Relief Seven and Eight

1. Compensatory damages in the amount of \$150,000.00  
or as shown according to proof;

2. Punitive damages to be shown according to proof;

3. Reasonable attorney's fees and costs; and

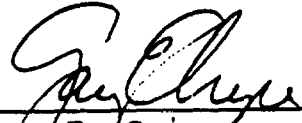
4. Such other and further relief as the Court deems  
just and proper.

///

DATED: March 10, 1993

CRIFE & GRAHAM


By

  
Gary E. Crife,  
Attorneys for Plaintiff  
PAPPAS TELECASTING, INC.

DEMAND FOR JURY TRIAL ON ALL CLAIMS FOR RELIEF

DATED: March 10, 1993

CRIFE & GRAHAM

By   
Gary E. Crife,  
Attorneys for Plaintiff  
PAPPAS TELECASTING, INC.

A.



# FRESNO STATE UNIVERSITY

*Sports Information*

5305 N. Campus Dr., Rm. 153 • Fresno, California 93740-0027 • (209) 278-2509 • Fax: (209) 278-4681  
Scott Johnson, Director

Harold Gibson, Assoc. A.D.,  
Washington State University  
107 Bohler Gym  
Pullman, WA 99164-1610

6-26-91

Dear Harold:

This letter is to confirm our previous conversation and to thank you for granting permission to televise the football game between our two institutions on September 14, 1991.

We appreciate your cooperation in not charging any rights fees as we will reciprocate in future games at our facility. Mr. Howard Zuckerman is the producer of our telecasts this year as he will be in touch with you for necessary arrangements to be made for the telecast.

Thanks again and best wishes.

Sincerely,

Scott Johnson  
Asst. A.D. Communications

*Jim Livengood (A.D.)*



B.



# FRESNO STATE UNIVERSITY

*Sports Information*

9305 N. Campus Drive, Rm. 153 • Fresno, California 93740-0027 • (209) 278-2309 • Fax: (209) 278-468  
Scott Johnson, Director

Mike Corwin, Asst. A.D. 505-737-1547  
Oregon State University  
Gill Coliseum  
Corvallis, OR 97331-4105

6-26-91

Dear Mike:

This letter is to confirm our previous conversation and to thank you for granting permission to televise the football game between our two institutions on September 21, 1991.

We appreciate your cooperation in not charging any rights fees as we will reciprocate in future games at our facility. Mr. Howard Zuckerman is the producer of our telecasts this year as he will be in touch with you for necessary arrangements to be made for the telecast.

Thanks again and best wishes.

Sincerely,

Scott Johnson  
Asst. A.D. Communications

Darrel BAUGHMAN (A.D.)

504  
KSLV  
PAC-10.

100

100

e

AUG 29 '91 12:47PM CBLF SPORTS INFO

P. 2/2

D



PAPPAS  
TELECASTING  
COMPANIES

Harry J. Pappas -  
PRESIDENT/  
CHIEF EXECUTIVE OFFICER

September 3, 1991

VIA TELECOPIER 213-286-3976

TO: Mr. John Saverino  
President, Prime Ticket

FR: Harry J. Pappas

Re: PAC-10 Games

Dear John,

My apologies, in case they are needed, for having addressed my letter of Thursday, August 29th, to Bob Thompson of TCI. As I found out late Friday afternoon (see attached), I had been misinformed as to the ownership interest in Prime Ticket.

John, it's been a heck of a long time since we have had any contact ... I am sure you can understand how much it means to our audiences whom we have already informed that we would be carrying these games, the advertisers to whom packages were sold months ago and to Fresno State University that we actually broadcast these games 'live'.

John, I know you to be a fine businessman, but also one who has a statesmanlike attitude. On behalf of all concerned, I beg of you to grant the waiver requested in my August 29th letter. Time is of the essence. May I please hear from you very soon.

Sincerely,

PAPPAS TELECASTING COMPANIES

  
Harry J. Pappas



PAPPAS  
TELECASTING  
COMPANIES

August 29, 1991

Harry J. Pappas  
PRESIDENT  
CHIEF EXECUTIVE OFFICER

Mr. Bob Thompson  
Sr. Vice President  
Communications and Policy  
Planning

TCI  
P. O. Box 5630  
Denver, CO 80217

Dear Bob:

Preston Padden has always said you are a good fellow and fair. I need your help ... to get a waiver by Prime Ticket of certain of their black out rights in connection with two PAC-10 games. I have tried to contact John Severino today but with no success. Here are the facts:

1. KMPH FOX 26 has been telecasting various home and away Fresno State University football and basketball games for over 12 years. When the schedule was set some months ago for the 91-92 season, Fresno State requested and we agreed to broadcast, among others, two away games of PAC-10 teams, Washington State on 09/14/91 and

Mr. Bob Thompson  
Page 2

August 29, 1991  
PAC-10 Games

another PAC-10 game on each of those dates and, thus, invoking the black-out window clause of their agreement.

6. Bob, as you can imagine, we have already sold the advertising ... we have been promoting the games ... the audience expects them... that is why I need your help!

Since TCI is a principal owner of Prime Ticket, I am appealing to you for your immediate assistance to achieve a grant of waiver by Prime Ticket so that our television station will be able to carry these two games to the San Joaquin Valley residents who expect to be able to see them. KMPH does not "network" the distribution of the games. The games will only be seen by viewers to our station residing in the San Joaquin Valley (from Bakersfield to Merced). Prime Ticket is carried on some of the cable systems in our coverage area; however, since these are different games than those that Prime Ticket will be carrying on the dates in question, I cannot see how any harm to Prime Ticket's interests would result from our carriage of the Fresno State vs. Washington State and Oregon State games.



**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO**

I am employed in the State of California, County of San Bernardino. I am over the age of 18 years and am not a party to the within action; my business address is 2436 N. Euclid Avenue, Suite 5, Upland, California 91786.

On March 10, 1993 I served the foregoing documents(s) described as:

**FIRST AMENDED COMPLAINT FOR DAMAGES  
DEMAND FOR JURY TRIAL**

on all interested parties by placing a true copy thereof in a sealed envelope addressed as follows:

Timothy J. Buchanan, Esq.  
Dietrich, Glasrud & Jones  
5250 N. Palm Avenue  
Suite 402  
Fresno, California 93704

Steven M. McClean, Esq.  
Thomas, Snell, Jamison, Russell & Asperger  
2445 Capital Street  
P.O. Box 1461  
Fresno, California 93716

( ) BY FACSIMILE.

( ) BY MAIL. I caused such envelope with postage thereon fully

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO**

I am employed in the State of California, County of San Bernardino. I am over the age of 18 years and am not a party to the within action; my business address is 2436 N. Euclid Avenue, Suite 5, Upland, California 91786.

On March 10, 1993 I served the foregoing documents(s) described as:

**FIRST AMENDED COMPLAINT FOR DAMAGES  
DEMAND FOR JURY TRIAL**

on all interested parties by placing a true copy thereof in a sealed envelope addressed as follows:

Daniel M. Wall, Esq.  
McCutchen, Doyle, Brown & Emersen  
Three Embarcadero Center  
San Francisco, CA 94111

( ) BY FACSIMILE.

(XX) BY MAIL. I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Upland, California.

( ) BY PERSONAL SERVICE. I caused such envelope to be delivered by hand to the offices of the addressee.

(XX) STATE. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(XX) FEDERAL. I declare that I am employed in the office of a member of the Bar of this court at whose direction the service was made.

Dated this 10th day of March, 1993.

  
Joan Hamm

**EXHIBIT THREE**

1 Gary E. Cripe  
2 State Bar No. 076154  
3 LAW OFFICES OF HERBERT HAFIF  
4 269 West Bonita Avenue  
5 Claremont, California 91711  
6 (714) 624-1671

7 Attorneys for Plaintiffs  
8 PAPPAS TELECASTING, INCORPORATED  
9 and HARRY J. PAPPAS

**ORIGINAL  
FILED**

**OCT 24 1991**

**CLERK, U. S. DIST. COURT  
Eastern District of California**

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA  
12

13 PAPPAS TELECASTING, INCORPORATED, )  
14 a California corporation and as public )  
15 trustee, HARRY J. PAPPAS, an individual, )

16 Plaintiffs, )

17 v. )

18 SPORTSCHANNEL AMERICA, INC., a )  
19 corporation, SPORTSCHANNEL LOS )  
20 ANGELES HOLDING CORP., a corporation; )  
21 SPORTSCHANNEL BAY AREA HOLDING )  
22 CORP., a corporation; CREATIVE SPORTS )  
23 MARKETING, INC. a corporation and the )  
24 BIG WEST CONFERENCE, an )  
25 unincorporated association, and DOES 1 )  
26 through 20, inclusive, )

27 Defendants. )  
28

**CV-91-577 REC**

No.

COMPLAINT FOR INJUNCTIVE, AND  
DECLARATORY RELIEF AND DAMAGES

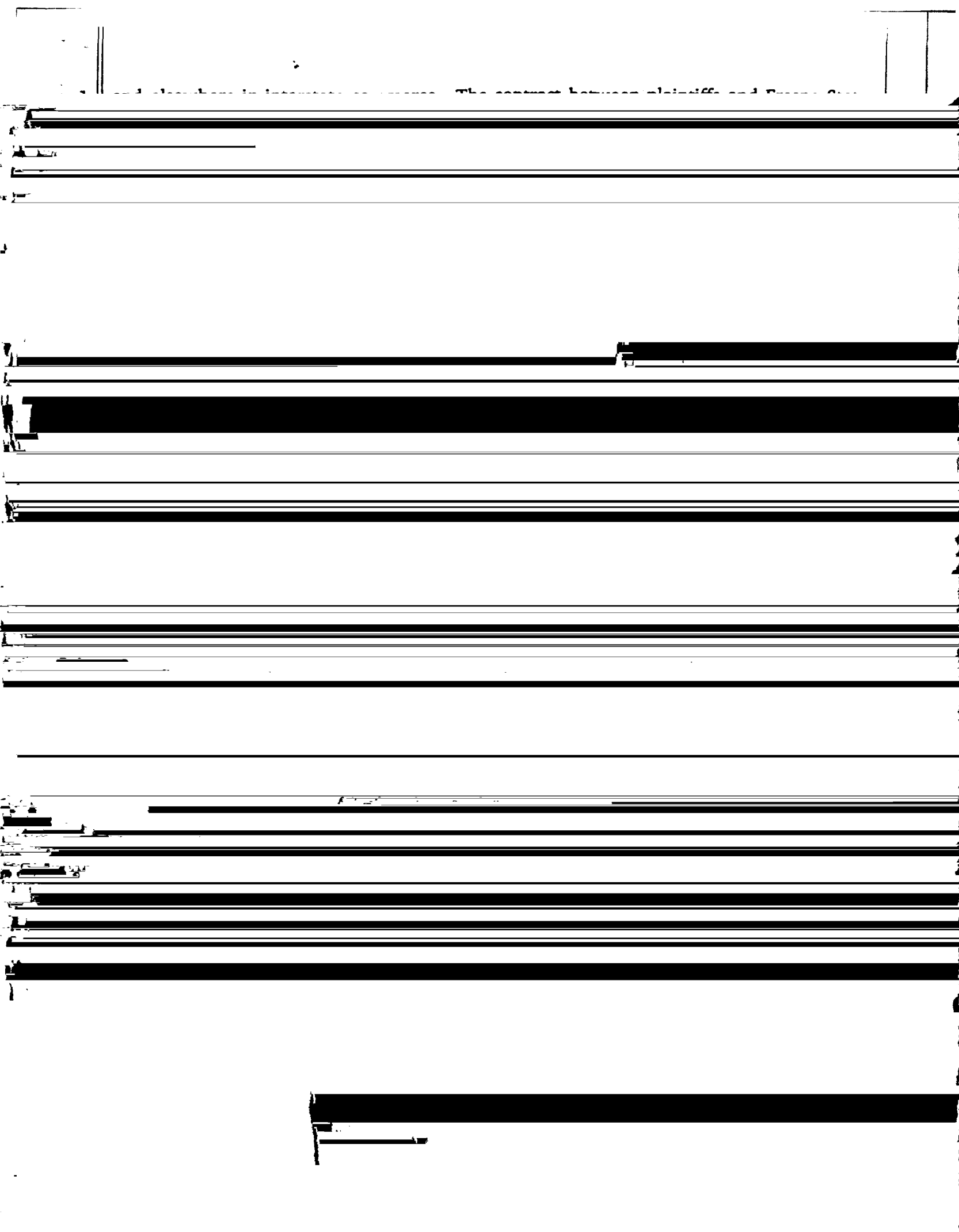
DEMAND FOR JURY TRIAL

Plaintiffs allege as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction over this action is conferred by Sections 4,12 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26; 28 U.S.C. §§1337 (Laws Regulating Commerce) and 2201 (Declaratory Judgments); and Principles of Ancillary and Pendent Jurisdiction.

2. Each defendant resides, is found, has an agent, or transacts business in this judicial district. The acts alleged herein have been and are being carried out and made effective within this judicial district, and have their effect both within this judicial district



1 ("SportsChannel Bay Area"), whose principle place of business is in San Francisco,  
2 California. Plaintiffs are informed and believe and thereupon allege that the affairs of  
3 SportsChannel Bay Area are administered by and through SportsChannel L.A. Plaintiffs  
4 are further informed and believe and thereupon allege that John Moore is the President  
5 of SportsChannel America, Inc., and serves as the Chief Executive Officer of both  
6 SportsChannel L.A. and SportsChannel Bay Area. SportsChannel America, Inc.,  
7 SportsChannel Los Angeles and SportsChannel Bay Area are referred to collectively  
8 herein as "SportsChannel."

9 5. Defendant Creative Sports Marketing, Inc. ("Marketing"), is a North Carolina  
10 corporation, the principal business of which is as a producer of television programs,  
11 promotion and marketing of athletic events. Marketing purports to be the exclusive  
12 representative of Defendant, the Big West, in those areas.

13 6. Defendant the Big West Conference ("Big West"), is an athletic conference, and  
14 an unincorporated association, having its principle place of business located in Santa  
15 Ana, California. The men's division of the Big West is comprised of ten (10) institutions  
16 of higher learning (California State University, Fullerton, Fresno State University, Long  
17 Beach State University, New Mexico State University, San Jose State University,  
18 University of California, Irvine, University of California, Santa Barbara, University of  
19 Nevada, Las Vegas, University of the Pacific and Utah State University). Of those  
20 institutions, only California State University, Fullerton, Fresno State University, Long  
21 Beach State University, New Mexico State University, San Jose State University,  
22 University of Nevada, Las Vegas. University of the Pacific and Utah State University

1 appearances in post-season bowl games.

## 2 CO-CONSPIRATORS AND AGENTS

3 7. Various corporations, associations, entities and individuals not named as  
4 Defendants in this action have participated as co-conspirators and/or agents in the  
5 violations alleged herein, have aided and abetted those violations and have performed  
6 acts and made statements in furtherance thereof. The names and identities of said co-  
7 conspirators and/or agents are currently unknown to Plaintiffs herein. At such time as  
8 said parties are identified, Plaintiffs will seek leave to amend this Complaint to properly  
9 name said parties.

10 8. Plaintiffs are informed and believe and thereupon allege that at all times  
11 mentioned in this Complaint each of the Defendants was the agent of each of the  
12 remaining Defendants, and in doing the things hereinafter alleged, was acting within the  
13 course and scope of this agency with the permission and consent of his Co-Defendants.

## 14 RELEVANT MARKET

15 9. The relevant product market involved in this action is the live television  
16 broadcast of regular season college football games. The relevant geographic market is  
17 the area of dominant influence of KMPH defined herein as the Counties of Fresno, Kern,  
18 Kings, Madera, Tulare, Mariposa, Merced, Stanislaus, San Benito, San Luis Obispo and  
19 San Joaquin, California.

## 20 INTERSTATE COMMERCE

21 10. The parties to this action engage extensively in interstate commerce, and the  
22 illegal conduct of Defendants alleged herein takes place in and substantially affects  
23 interstate commerce. Defendant, the Big West, consists of member universities that  
24 recruit student athletes on a nationwide basis. Many of the athletic contests between the  
25 member institutions of Defendant, the Big West, require interstate travel and commerce.

## 26 BACKGROUND OF DEFENDANTS' VIOLATIONS

### 27 The Importance Of Television To College Football Programs

28 11. It is extremely valuable to colleges and universities engaged in college

1 football, including FSU, to have their games televised. Each college or university  
2 appearing in a television broadcast receives direct monetary compensation, which is  
3 distributed among all the members of the athletic conference to which it belongs. The  
4 conference and each of its members gain in reputation and prestige from a television  
5 appearance by any one member.

6 12. A prominent football program also attracts alumni support for an institution's  
7 academic, research and capital projects as well as its athletic programs. The prominence  
8 of a university's football program and the alumni and fan support it engenders, lead to  
9 financial support which contributes to the excellence of the entire university. Such a  
10 program also attracts talented student athletes who seek the exposure which is in part  
11 created by the televising of a university's football games, as well as other students who  
12 are made aware of the university and attracted by the prominence of the university's  
13 athletic program. FSU has been ranked among the top 25 college football teams in  
14 America during the 1991 season and on various occasions in the past.

15 13. The appearance on television of a college football team enhances the  
16 recognition and reputation of the institution among members of the general public. The  
17 televising of college football games affects the attention which the participating football  
18 teams receive from sports writers and college football coaches and, therefore, affects the  
19 national rankings of the participating college's football teams. Both of these factors have  
20 great impact on the college's ability to maintain or enhance their national following,  
21 increase contributions and recruit students both for the college's athletic and academic  
22 programs. Moreover, the money received by a university for the rights to televise its  
23 football games is crucial in supporting the diverse athletic programs for men and women  
24 students, including many programs which are not self-supporting and require significant  
25 funding.

26 14. At all relevant times the members of Defendant, the Big West, have been  
27 members of Division I-A of the NCAA (the NCAA Division whose members have the most  
28 prominent and successful football programs), have engaged in college football and have



1 participated in the market for live college football television broadcasts. At all relevant  
2 times, Defendant, the Big West, and each of its member schools have been members of  
3 the NCAA.

#### 4 THE IMPORTANCE OF TELECASTING FRESNO STATE

#### 5 UNIVERSITY ATHLETIC EVENTS TO KMPH

6 15. At both the corporate and station level of KMPH, a conscious decision has  
7 been made to develop the franchise of KMPH by identifying KMPH as the community  
8 television station serving the San Joaquin Valley. KMPH is referred to in promotional  
9 activities as "We're your station". A critical building block in establishing KMPH as "your  
10 station" has been KMPH's close identification with FSU. For over ten years KMPH has  
11 telecast both home and away FSU athletic events to its viewers. For many years the  
12 station subsidized the cost of telecasting FSU athletic events not only to help identify  
13 KMPH as "your station," but also to provide a community service to its viewers in a  
14 community where FSU looms large as a cultural and entertainment center of the San  
15 Joaquin Valley. Approximately 5.5% of the gross revenues of KMPH for 1990 were  
16 attributable to televising FSU football and basketball games. Recently KMPH has  
17 celebrated 20 years of continuous operation and service to the San Joaquin Valley.  
18 Prominently featured in the promotional spots aired over KMPH during the last few  
19 weeks has been the relationship between KMPH and FSU, and specifically FSU athletics.  
20 The association of KMPH with FSU and its nationally recognized athletic program is  
21 important to KMPH as a critical building block in the creation of and maintenance of the  
22 franchise value of the station, far beyond the numerical contributions to revenue and  
23 profit made by FSU athletic telecasts. The association of KMPH with FSU is of equal  
24 importance to the viewers of KMPH. For many of the viewers of KMPH, free television is  
25 their sole source of affordable entertainment. KMPH, for many, is the only way to watch  
26 the athletic exploits of the Fresno State Bulldogs. The close identity of KMPH and FSU  
27 athletics has been instrumental in developing viewer station loyalty and the continued  
28 close identity and relationship between KMPH and FSU is critical to maintaining the